

U.S. DISTRICT COURT
DISTRICT OF NEVADA
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

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LANCE S. WILSON
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BY DEPUTY

GERALD ARMSTRONG,

VS.

DAVID MISCAVIGE, et al.,

CV-N-97-670-ECR (RAM)

MINUTES OF THE COURT

DATE: July 8, 1998

PRESENT: EDWARD C. REED, JR. U.S. District Judge

Deputy Clerk: WAYNE JULIAN Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

IT IS HEREBY ORDERED that Defendants' motion (#13) to dismiss for lack of personal jurisdiction is GRANTED, and Defendants Church of Scientology of Texas and Cathy Norman are DISMISSED.

I. Background

Plaintiff was formerly a member of the Church of Scientology, but left the church and has allegedly suffered post-departure retaliation at the Church's hands. In October 1996 Defendant Cathy Norman, a resident of Texas and member of Defendant Church of Scientology of Texas, mailed a letter (#1, Ex. A) to another church member in Alabama, which letter allegedly defamed Plaintiff. Plaintiff was living in California at the time. Compl. at ¶ 22 (#1). Plaintiff sued Ms. Norman and the Church of Scientology of Texas, as well as other parties, in November 1997 for defamation and intentional infliction of emotional distress.

II. Subject Matter Jurisdiction

The asserted basis for our subject matter jurisdiction is diversity of citizenship. Plaintiff bears the burden of demonstrating subject matter jurisdiction. Lew v. Moss, 797 F.2d 747, 751 (9th Cir. 1986). In this case, Plaintiff claims to have been a citizen of Nevada at the time he filed suit. Id. at 750 (citizenship is determined at time of filing). A U.S. citizen is a citizen of a state for diversity purposes if he is domiciled there; that is, if he has established a fixed habitation or abode in a particular place, and intends to remain there permanently or indefinitely. Id. at 749-50. Physical presence is a central and ordinarily necessary factor in determining domicile, and where a party has recently moved, physical presence in the new state is required to effectuate a change in domicile. Id.; Hendrix v. Naphthal, 971 F.2d 398, 400 n.2 (9th Cir. 1992).

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In this case, the evidence of domicile is hotly disputed, but all Plaintiff need demonstrate at this stage is that a genuine issue of material fact exists regarding subject matter jurisdiction. Lew, 797 F.2d at 751; see Wilson v. A.H. Belo Corp., 87 F.3d 393, 396 (9th Cir. 1996). Although Defendants assert that Plaintiff is domiciled in California, and offer considerable evidence that he has been living in British Columbia since no later than December 1997, Mr. Armstrong's declaration states that he works in Nevada, possesses a Nevada driver's license, and keeps his personal property in Nevada. Compare Armstrong Decl. (#10, Ex. H) with Armstrong Decl. at ¶ 9 (#21). He also states that he "stays" in Nevada, and has done so since November 1997 (when he filed the present action), but is afraid of specifying his address because he fears Defendants' retaliation. Armstrong Decl. at 21 (#21). There exists a genuine issue of material fact regarding Plaintiff's citizenship, and because Defendants are admittedly citizens of either California or Texas, complete diversity exists and we possess jurisdiction.

III. Personal Jurisdiction

A federal court sitting in diversity applies the law of the forum state when deciding issues of personal jurisdiction. Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1484 (9th Cir. 1993). This case was brought in Nevada; however, because Nevada's long-arm statute allows courts to exercise personal jurisdiction over defendants to the maximum extent permitted by the Due Process Clause of the United States Constitution, personal jurisdiction in this case must simply meet the requirements of due process. Firouzabadi v. First Judicial District Court, 885 P.2d 616, 619 (1994) (construing Nev. Rev. Stat. Ann. § 14.065). Moreover, when the jurisdictional issue is decided without a full evidentiary hearing, the plaintiff need only make out a prima facie showing of jurisdiction. Firouzabadi, 885 P.2d at 618-19; Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir. 1995). That is, the plaintiff must allege facts which, if true, would support jurisdiction over the defendant. Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).

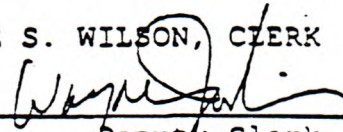
Personal jurisdiction may be general or specific. General personal jurisdiction exists where "the defendant's activities in the forum state are so substantial or continuous and systematic that it may be deemed present in the forum and hence subject to suit over claims unrelated to its activities there." Firouzabadi, 885 P.2d at 619; Gordy v. Daily News, L.P., 95 F.3d 829, 836 (9th Cir. 1996). In this case there is no evidence that either moving Defendant has any connections whatsoever with Nevada, either as alleged in the Complaint or in Plaintiff's Opposition.

As for specific jurisdiction, one requirement is that the "defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws." Core-Vent, 11 F.3d at 1485; see Trump v. District Court, 857 P.2d 740, 747-50 (1993). Ms. Norman's letter plainly fails to meet this requirement, nor does Plaintiff even attempt to explain how it could meet this requirement: the letter was

neither sent to Nevada nor mailed from Nevada, Plaintiff did not live in Nevada at the time he received a copy of the letter, and Plaintiff has not alleged any reputational harm suffered in Nevada. Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998). (discussing "purposeful availment"). This is not sufficient to grant us specific jurisdiction.

LANCE S. WILSON, CLERK

By


Deputy Clerk